

**Fair Political Practices Commission**  
**MEMORANDUM**

**To:** Chairman Randolph, Commissioners Blair, Downey, Karlan and Knox

**From:** William J. Lenkeit, Counsel, Legal Division  
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**Date:** January 4, 2005

**Subject:** Gift Cluster – Adoption of Proposed Amendments to Regulation 18941.1, 18946, 18946.1, 18946.2, 18946.4, and adoption of Regulation 18640.

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**I. EXECUTIVE SUMMARY**

As a result of recent issues raised concerning the Political Reform Act's (the "Act") gift valuation methods contained in regulations 18946 through 18946.4, and specifically those dealing with the value of the gift received in attending an event, the Commission has re-examined the current regulations in order to determine if a need exists for clarification of certain issues and modification of certain valuation methods to further the purposes of the Act. The issues presented involve the "face value rule" for ticketed events, the "drop-in" rule for invitation-only events, and the "no value rule" for 501(c)(3) fundraising events.

At its November 2004 meeting, the Commission considered the regulations and made decisions regarding the following:

- **Regulation 18946** — Amendments to regulation 18946 providing certain definitional terms should be noticed and brought back to the Commission for adoption. These definitions should include references to regulations 18946 through 18946.5.
- **Regulation 18946.1** — Amendments to regulation 18946.1 providing that tickets to events that are obtained by the donor at a price higher than the face value of the ticket shall be valued at the cost to the donor should be noticed and brought back to the Commission for adoption.
- **Regulation 18946.2 and adoption of regulation 18640** — Amendment to regulation 18946.2 providing that attendance at invitation-only events be valued at the pro-rata share of the cost to the donor and that there be a limited exception to the rule if the guest merely "drops-in" for a brief period of time should be noticed and brought back for adoption. The definition provided for "pro-rata share of the cost of the event should be modified to be based on the number of people who attend or the number of "acceptances" received prior to the event. Additionally, the range of options presented for consideration

of adopting a “drop-in rule” should include both factors involving the length of the stay and limitations on the amount of the benefit received.

- **Regulation 18946.4** — Amendments modifying or eliminating the “no value rule” for tickets to 501(c)(3) fundraising events should be noticed and brought back for adoption.

The proposed amendments are addressed in the following Decision Points:

**Decision Point 1:** Should regulation 18946.1 be amended so that a ticket purchased at an amount greater than its face value be valued at the price paid by the donor?

**Decision Point 2:** Should there be a “drop-in” rule under regulation 18946.2 for officials attending invitation-only events for a brief period of time and where they do not receive the full benefit of attending the event?

**Decision Point 3:** Should the “no value rule” for tickets to fundraising events for 501(c)(3) organizations under regulation 18946.4(b) be modified by limiting the number of tickets that qualify under this rule, or should the rule be eliminated altogether?

**Decision Point 4:** Should there be an exception to the valuation rules for fundraising events for nonprofit organizations under regulation 18946.4 where the fundraiser is an entertainment event such as a concert, play, or sporting event?

In addition to the above, minor technical changes are proposed to regulation 18941.1 to reference any changes to regulations 18946.2 and 18946.4, as exceptions for payments of food.

## II. Background

The Political Reform Act places certain restrictions on the receipt of gifts by public officials. The Act prohibits candidates and officials from receiving gifts of \$360<sup>1</sup> or more in a calendar year from anyone in a position to influence the public official’s action and gifts valued at \$10 or more received in a calendar month from a lobbyist or lobbying firm. (Sections 89503, 86203.) In addition, the Act prohibits a public official from using his or her position to influence the outcome of a decision involving the donor of a gift valued at \$360 or more. (Section 87103.) Pursuant to this provision, public officials are deemed to have a conflict-of-interest if participating in a decision involving a donor of a gift to the official, and they are prohibited from voting on or exercising any influence on the outcome of such a decision.

Recently, Commission staff was asked to analyze issues relating to valuation methods regarding two specific types of gifts: attendance at ticketed events, and attendance at invitation-only events. These issues arose from questions raised surrounding the Rose Parade and Rose Bowl Game, and the City of San Diego’s hosting of the National Football League’s Super Bowl in January of 2003 and attendance by city officials at the “Take Flight” or “Commissioner’s Party” as part of the Super Bowl festivities.

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<sup>1</sup> The increase from \$340 went into effect on January 1, 2005.

The issue raised regarding the Super Bowl activities was the proper method for valuing the gift received in attending the Commissioner's Party — an invitation-only event. Although staff advice has consistently stated that the value of the gift received for attending such an event is the attendee's pro rata share of the cost of the event, the only codification of this rule appears in regulation 18946.2, and its strict application addresses only "officials or candidates who are honored at a testimonial dinner or similar event." As a result, staff determined a need to present a proposed codification of the general rule for all invitation-only events.

In addition, examination of this issue raised questions relating to a modified "pro-rata share" valuation method used for invitation-only events where the guest attends the event, but only stays briefly and does not receive the full value of that which is provided at the event. Referred to as the "drop-in" rule, Commission staff has consistently advised that if the official merely drops-in for a brief period of time and does not stay for the meal or entertainment, the value of the gift received is limited to the actual value of the food and beverages the official consumed at the event. This rule has implications for both lobbyist employers, who are required to report the value of the gift on periodic "activity expense" reports, as well as for the officials attending the event. As this rule was developed solely on the basis of Commission staff advice, once again staff determined a need to present a proposed codification of the rule for the Commission to consider its adoption in regulatory form or its elimination altogether.

Finally, any examination of gift valuation rules raised as a result of events surrounding the Super Bowl would not be complete without looking at the value of the ticket to the game itself. Regulation 18946.1 currently provides that tickets to certain public events are valued at the face value of the ticket. However, for certain events, with the Super Bowl Game being an acute example, because the demand far outweighs the supply, obtaining tickets at face value can be particularly difficult, and many tickets to these events are obtained on the secondary market at prices greatly exceeding their face value. Because of this, gifts of highly valued tickets can be passed along under the radar of the gift limitation and conflict of interest rules due to their fixed valuation at the price indicated on the ticket. Accordingly, staff proposes a reexamination of the gift valuation rule for tickets under regulation 18946.1 to address this concern.

The final issue regarding valuation of tickets to the Rose Parade and Rose Bowl Game involves a different concern. The Rose Parade and Rose Bowl Game are fundraising events for the Tournament of Roses Association, a 501(c)(3) organization. As such, pursuant to regulation 18946.4(b), tickets to these events have no value. Each year, Pasadena city officials are provided tickets to these events, some at no charge and others obtainable at face value. However, because of the no value rule, these items need not be reported as gifts. The rule applies even if the tickets are not received from the Tournament of Roses Association. Staff proposes that the Commission reexamine the purposes of the 501(c)(3) no value exception and consider modification of the rule for certain "big ticket" events.

Additional information regarding the background and history of the current regulations and current Commission advice can be found in the Pre-notice Discussion of Amendments to the "Gift Cluster" Regulations — 18946, 18946.1, 18946.2, 18946.4; and adoption of Regulation 18640 memorandum ("Pre-notice Memorandum") presented at the November Commission meeting.

### III. Current Statutes and Regulations

Section 82028(a) provides that a “gift” means any payment<sup>2</sup> that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received. The Act regulates the receipt of gifts by public officials and candidates in three ways:

First, the Act places limitations on the acceptance of large gifts from anyone who may stand to benefit from the public official’s actions. The current limit is \$360 or more from any single source in a calendar year. (Section 89503, regulation 18940.2.) Additionally, the Act prohibits any gift of \$10 or more in a calendar month from lobbyists or lobbying firms. (Sections 86203, 86204.)

Secondly, so that the public is made aware of any potential influences from gifts, the Act imposes reporting obligations on candidates and public officials, requiring that any gift of \$50 or more from certain sources be reported and disclosed on a public document, referred to as a Statement of Economic Interests. (Sections 87200, 87203, 87207, 87300, 87302.)

Finally, the Act prohibits a public official from using his or her position to influence the outcome of a decision involving the donor of a gift or gifts with an aggregate value of \$360 or more provided to, received by, or promised to the public official within 12 months prior to the time the decision is made. (Sections 87100, 87103(e), regulations 18700, 18703.4.)

The gift valuation rules are found in regulations 18946 through 18946.4. Regulation 18946(a) provides the Act’s basic valuation rule — that gifts are valued at their fair market value as of the date of receipt or promise, except for in the circumstances identified under regulations 18946.1 through 18946.5. While the provisions under regulations 18946.1 through 18946.5 might be termed as exceptions to the general valuation rule, they can just as easily be classified as alternative methods of determining “what is fair market value?” at least with respect to the regulations that are examined here regarding events.

There is also an alternative to subdivision (a)’s basic fair-market-value stated in regulation 18946, subdivision (b). It provides that whenever the fair market value cannot be determined because the gift is unique or unusual, the value is the cost to the donor.

The issues identified above impact three situations identified in regulation 18946 concerning attendance at events, and addressed separately in regulations 18946.1, 18946.2, and 18946.4, from the basic fair market value rule stated in regulation 18946.

Regulation 18946.1 states the rule for valuation of tickets to events, and provides that the value of the ticket is the face value of the ticket “provided that the face value is a price that was, or otherwise would have been, offered to the general public. A ticket to the Super Bowl Game would be valued under this method and, at its face value.

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<sup>2</sup> Section 82044 provides: “‘Payment’ means a payment, distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible.”

Regulation 18946.2 sets forth the valuation method for attending testimonial dinners, for officials and candidates who are honored, as the “pro rata share of the cost of the event.” Under the proposed amendments to regulation 18946.2, this rule would be expanded, consistent with long standing advice, to apply to attendees at all invitation-only events. Events such as the Super Bowl Commissioner’s Party would therefore fall under this regulation.

Regulation 18946.4(b) provides that if the event is a “fundraising event for an organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, the ticket or other admission privilege has no value.” For example, since the Tournament of Roses Association falls under the 501(c)(3) exception, tickets to the Rose Parade and Rose Bowl Game have no value pursuant to this regulation.

#### **IV. Discussion and Proposed Regulatory Action**

Staff proposes that the Commission adopt amendments to regulations 18946 through 18946.4, and add regulation 18640 as discussed hereunder. These proposed amendment will further the purposes of the Act by: (1) providing a more accurate reflection of the true value of premium event tickets; (2) codifying the established rule for the value of attending any invitation-only event and determining if there should be a proper reduction in that value for attendance on a “drop-in” basis and, if so, what?; (3) determining a proper modification of the no value rule for tickets to 501(c)(3) fundraising events, especially when the event is a commercial entertainment event.

##### **A. Proposed Amendments to Regulation 18946**

As stated above, regulation 18946 provides the basic rules for valuation of gifts. The proposed amendment to regulation 18946 adds language as subdivision (d), which proposes definitions for the term: “face value,” “ticket/pass,” “invitation,” and “specific item,” as those terms are used in regulations 18946 through 18946.4 and regulation 18640. At the November pre-notice meeting, the Commission considered the regulation and directed staff to make some minor clarifications, identified below, and to notice the Amendments to regulation 18946, to be brought back to the Commission for adoption in January.

Except for the minor clarifying changes identifying the regulations to which the definitions apply, the only change from the language presented at the November pre-notice meeting is the addition of the definition for “specific item.” This language was added pursuant to the Commission’s discussion at the November pre-notice meeting regarding the need to clearly distinguish between items that are presented to all attendees, verses specific individual gifts given separately to the official or candidate at an event under regulation 18946.2.

##### **B. Proposed Amendments to Regulation 18946.1**

Regulation 18946.1 addresses the value of a gift of a ticket or pass to certain events, including sporting events, by creating an alternative means for determining fair market value when the gift is an admission to an event for which tickets are sold to the general public. Ordinarily, such tickets would be valued under the basic fair market value rule established in

regulation 18946, with the face value being the fair market value, just as any other item would be valued in the same way by its price tag. However, because tickets to certain premium events often sell out quickly at the face value price, and continued demand creates a secondary market, tickets to the event offered on the secondary market often sell at fluctuating prices above their original face value price.

Under regulation 18946.1 the fair market value of a ticket is fixed at its indicated value as represented by the face price of the ticket when offered for sale to the general public at that price. In fixing the value at face value, the regulation avoids taking into account fluctuations in the market that commonly occur with certain concerts, plays, and major sporting events, such as the Super Bowl Game. These fluctuations can result in several fold increases from the face value price of a ticket, with the purchase price of the potential gift reaching upwards of \$1,000 dollars in some cases, often making it difficult to determine the fair market value from the secondary market. Because of the difficulty in determining the fair market value of a given ticket at a given point in time during such vast fluctuations in prices, this regulation was conceived to address that concern.

Rather than attempting to determine the fair market value of the ticket on the basis of a constantly moving target, this regulation fixes the fair market value at the theoretical point in time at which the last ticket was sold at its original (face value) offering price. In so doing, it creates an artificial value that ignores the market realities that may exist for tickets after the event is sold out. Regulation 18946.1 is an anomaly in the Act, it is the only place (other than gifts deemed to have no value) where the value of a gift is fixed at a price that is not necessarily reflective of, either the true value of the gift or the price paid for the gift. As a result, tickets to some highly desirable and extremely visible events, where the cost of the ticket is readily evident to, (and perhaps beyond the reach of), a majority of those who wish to attend, show up in the hands of public officials without a true public accounting of what was actually paid, and by whom, for that public official to attend the event

The proposed amended language provides that if the ticket is purchased by the donor at a price greater than its face value, the value shall be the cost to the donor, thereby altering the valuation method for certain “high value” tickets to reflect the true market value of these items at the time the gift was acquired. This method of valuation, however, would only apply to tickets actually purchased at the higher price and would not require an adjustment in the gift value of a ticket according to market changes after the donor has purchased the ticket (e.g. if the value increases between the time the ticket is purchased and the time the gift is made).

This language remains unchanged from that presented at the November pre-notice meeting. At that meeting, the Commission instructed staff to notice the regulatory amendment to be brought back at the January Commission meeting to be considered for adoption. The proposed amendment to this regulation is presented in Decision Point 1 herein.

**Staff Recommendation:**

Regulation 18946.1, in its current form, attempts to address a legitimate concern in valuing tickets in an increasing demand market. However, it ignores an important reality — that

high valued gifts can be passed along to public officials at an artificially established, and possibly undervalued price.

At the November Commission Meeting, the discussion of this issue centered on the gift limit and reporting obligations resulting from these gifts. Little attention was given to the conflict of interest provisions implicated from the receipt of large gifts or how the current rule, by allowing the passing of gifts to officials whose value would otherwise create an impermissible conflict of interest, abrogates those disqualification rules by fixing the value at an amount under the conflict of interest radar. Staff believes this is an important concern.

The proposed amendment to regulation 18946.1 sets the alternate value at the cost to the donor. This is no different than the cost to the donor rule established under regulation 18946, subdivision (b) to be applied whenever “the fair market value cannot be readily ascertained because the gift is unique or unusual.” Essentially then, tickets such as those addressed here would be valued no differently than other “unique or unusual” gifts, and the burden of inquiry, to ask the donor how much was paid, would also be no different. Staff believes this is both fair and appropriate.

Limited public comment opposing this change at the November Commission Meeting suggested that the regulation should not be amended because, as it stands, it is both simply to understand and easy to apply. However, staff believes the rule is perhaps, too simple, in that it may not always reflect the true value of the gift received.

For the reasons stated about, staff recommends adoption of Decision Point 1.

### **C. Proposed Amendments to Regulation 18946.2 and Adoption of Regulation 18640**

In its current form, regulation 18946.2 provides an alternate valuation rule for attendance at testimonial dinners where the public official or candidate is honored. The valuation is the cost the donor paid to hold the event, divided by the number of guests who attend — the pro rata share of the cost of the event. As the regulation is currently worded, this valuation method strictly applies only to the guest who is honored. Long standing Commission staff advice has applied this method to all attendees at invitation-only events. The proposed amendments offered herein would codify this rule for all such events.

The need for determining a valuation method for invitation-only events arose because, when admission is provided to an event by invitation, there is no market price, as admission is not offered for sale on the market. With no market price, there can be no fair market value to establish. The method used here, therefore, reverts one step in the market process, and looks at what essentially would be the wholesale cost of the event if the event were a retail event. Since this is the last stage at which a market transaction occurred, the value becomes the fair market value as determined by what the donor had to pay to put on the event. This cost to the donor is then divided among the attendees, each paying his or her share of that cost.

At the October prenotice meeting, the Commission directed staff to notice the regulatory amendments to section 18946.2 and bring back the amendments for adoption. At the

Commission's suggestion, language was changed, replacing "RSVP's" with "acceptances, in proposed subdivision (c) defining "pro rata share of the cost of the event." The Commission also suggested defining the term "specific item" as used in this regulation. That definition has been added among the proposed definitions under regulation 18946.

The other major proposed amendment to this regulation is the codification of the "drop-in rule" as provided under proposed subdivision (e) and the adoption of regulation 18640 applying the proposed rule to the lobbyist employer reporting obligations under the Act. Commission staff advice letters, while somewhat limited, have allowed for the "drop-in" exception providing that when an official attends an event for a brief period of time and consumes limited food and beverages, the value of attending the event is the cost of the food and beverage actually consumed.

At the prenotice meeting, the Commission directed staff to return with various alternatives to the rule that would allow for consideration of, either or both, the length of the stay and the amount of food and beverage consumed as factors in defining the boundaries of the rule. Decision Point 2 provides those revised options.

#### **Staff Recommendation:**

Staff recommends that the proposed amendment codifying the "drop-in" rule be adopted in a form substantially the same as the advice that has been provided (Option 2, alternative 1). The purpose of this exception has been to find a fair means of valuation when the guest does not receive the full benefit of attending the event because the guest's stay is limited. The focus should be on the limited benefit received, since a gift, by definition, is anything that confers a benefit on the recipient. Staff believes that while the length of the stay is a factor in determining this benefit, it is not necessarily the primary factor, and defining this rule primarily in terms of the number of minutes stayed would create too absolute a rule, while ignoring the reality of the benefit of the gift received. Additionally, by fixing the number of minutes stayed, the period may be too brief for some events and not brief enough for others.

#### **D. Proposed Amendments to Regulation 18946.4**

Regulation 18946.4 provides the valuation rules for tickets to nonprofit and political fundraisers. Subdivision (b) states that if the fundraising event is for a 501(c)(3) organization, the ticket has no value. Pursuant to this section, tickets to the Rose Bowl Game and Rose Parade, and other such events held by 501(c)(3) organizations, have no value.

At the November prenotice meeting, the Commission considered various options to either amend or eliminate the no value rule for 501(c)(3) organization. Of the three options presented, the Commission rejected the third option and directed staff to bring back proposed adoption language on the first two options for consideration at the January meeting. These options, are presented in Decision Point 3, along with a new third option, presented in Decision Point 4. The first option eliminates the rule altogether. The second option limits the no value rule to a maximum of two tickets.

The language in these two options remains the same as at the November meeting with one exception. The second option limiting the rule to two tickets, now presented in Decision Point 2, formerly provided that if more than two tickets were provided, the additional tickets would be valued under regulation 18946.1 at the face value of the ticket. However, because this method would cause a higher valuation of those tickets for 501(c)(3) organizations than it would for similar tickets for other nonprofit organizations under regulation 18946.4, subdivision (a), the language has been modified to value the additional tickets under the same method as used in regulation 18946.4, subdivision (a).

Staff has also added a new third option under Decision Point 4. The option was added based on the Commission's discussion in November concerning the third option presented with respect to regulation 18946.4, subdivision (b), at that meeting, which distinguished certain "commercially marketed" and broadcast events. This option was eliminated, at least in part, due to concern that certain theatre and concert events would not be covered because they were not broadcast.

New Decision Point 4 addresses this concern. This option singles out certain separate entertainment events, from the traditional fundraising event, for separate treatment. For tickets that provide admission to sporting events, concerts, plays, theater or opera performances, or similar entertainment events, the no value rule would be limited to two tickets, and the additional tickets would be valued under regulation 18946.1 at the face value of the ticket. This valuation method for nonprofit fundraisers involving entertainment events would apply under both subdivisions (a) and (b) of regulation 18946.4.

**Staff Recommendation:**

Staff recommends that the Commission adopt Decision Point 4, as this option best addresses the concerns raised under this project by limiting its application to the types of events considered. However, if the Commission determines that the rule is still too broad, the two options presented in Decision Point 3 are available to either totally eliminate the no value rule or limit its application to two tickets for any 501(c)(3) fundraising event.

**Attachments:**

Appendix A – Proposed Amendments to Regulations 18941.1, 18946, 18946.1, 18946.2, 18946.4, and adoption of 18640.